

NO. _____

IN THE TEXAS
COURT OF CRIMINAL APPEALS

RECEIVED
COURT OF CRIMINAL APPEALS
9/18/2023
DEANA WILLIAMSON, CLERK

AUSTIN, TEXAS

IN RE

JEDIDIAH ISAAC MURPHY,
Relator

In cause no. F00-02424-m
from the 194th Judicial District Court of
Dallas County, Texas

PETITION FOR WRIT OF MANDAMUS

**THIS IS A DEATH PENALTY CASE WITH AN EXECUTION DATE
SET FOR OCTOBER 10, 2023**

Catherine Clare Bernhard
P.O. Box 506
Seagoville, Texas 75159
972-294-7262
fax – 972-421-1604
cbernhard@sbcglobal.net
State Bar No. 02216575

ATTORNEY FOR RELATOR

IDENTITY OF PARTIES AND COUNSEL

Trail Judge:

Honorable Ernest White
194th Judicial District Court
Dallas County, Texas

For Relator, Jedidiah Isaac Murphy:

Catherine Clare Bernhard
State Bar No. 02216575
P.O. Box 506
Seagoville, Texas 75159
972-294-7262
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State of Texas:

Ali Nasser
District Attorney Pro Tem
Assistant Attorney General
State Bar No. 24098169
P.O. Box 12548, Capital Station
Austin, Texas 78711
512-936-2134
Ali.Nasser@oag.texas.gov

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Relator, Jedidiah Isaac Murphy, by and through his attorney of record, respectfully submits this Petition for a Writ of Mandamus in the above-styled and numbered case pursuant to Rule 72 of the Texas Rules of Appellate Procedure.

STATEMENT OF THE CASE

Jedidiah Isaac Murphy, Relator, seeks a writ of mandamus to order the Honorable Ernest White, Judge of the 194th Judicial District Court, Dallas County, Texas, to rule on the merits of Relator's Motion Requesting MRI and Associated Orders.

STATEMENT OF JURISDICTION

This Court has jurisdiction to issue writs of mandamus in criminal law matters pursuant to Article V, § 5 of the Texas Constitution and Article 4.04 of the Texas Code of Criminal Procedure. This is especially true in cases where the death penalty has been assessed as happened in this case.

ISSUE PRESENTED

The issue presented is whether a trial court has jurisdiction to rule on a motion requesting a brain scan in a post-conviction capital case with an execution date where neither an Art. 11.071 writ application nor an Art. 46.05 motion is currently pending before the trial court.

STATEMENT OF FACTS

Relator, Jedidiah Isaac Murphy, was convicted of capital murder and sentenced to death on June 30, 2001. (Appendix A). His execution is currently scheduled for October 10, 2023. (Appendix B) There is no litigation currently pending in the trial court. Undersigned counsel was appointed by the trial court on November 15, 2022, to represent Relator in post-conviction matters. (Appendix C). On September 1, 2023, Relator filed a Motion Requesting MRI and Associated Orders. (Appendix D). The State filed a Motion in Opposition arguing that the trial court did not have jurisdiction to grant such a motion. (Appendix E). Non-party UTMB has also filed a response opposing the granting of Relator's motion. (Appendix F). The trial court ruled that it did not have jurisdiction to consider the merits of Murphy's motion.

ARGUMENT

The State argues that the trial court does not have jurisdiction to grant the order requested by Relator. Relator argues that the trial court does have such jurisdiction under Art. 11.071 and Art. 46.05. Additionally, Texas courts recognize implied powers beyond those expressly described. See Eichelberger v. Eichelberger, 582 S.W.2d 395, 398-99 (Tex. 1979) (“[In addition to] the express grants of judicial power to each court, there are other powers which courts may exercise though not expressly authorized or described by constitution or statute[,]” powers “which can and ought to be implied from an express grant of power[.]”). After a conviction, trial courts maintain special jurisdiction to ensure higher court mandates are fulfilled and to perform other functions specified by statute, such as collecting evidence in a habeas corpus proceeding. State v. Patrick, 86 S.W.3d 592, 594 (Tex. Crim. App. 2002). The trial court in this case maintains powers that are “expressly conferred” by statute, as well as “inferred or implied” powers “as are reasonably proper and necessary, that is, as ought to be inferred, from the powers and jurisdiction directly granted.” Ex parte Hughes, 129 S.W.2d 270, 273-74 (Tex. 1939).

The implied powers are particularly necessary when a court must carry out its statutory duty in a manner to afford parties the benefit of the

purpose of a statutory provision. See Eichelberger, 582 S.W.2d at 398 (“The inherent powers of a court are those which it may call upon to aid in the exercise of its jurisdiction, in the administration of justice, and in the preservation of its independence and integrity.”); accord State v. Johnson, 812 S.W.2d 609, 612 (Tex. Crim. App. 1991) (citing approval of Eichelberger). Here, counsel was appointed by the trial court (an act for which the State has not disputed trial court jurisdiction), to represent Murphy in “any other post-conviction matter until the Defendant’s sentence is complete.” Surely, such appointment encompasses the duty to investigate any grounds for a subsequent writ, as well as investigate competency to be executed. See Tex. Code Crim. Proc. arts. 11.071 § 5; 46.05. In fact, Art. 46.05(b) states that, “The trial court retains jurisdiction over motions filed by or for a defendant under this article.” The court’s jurisdictional powers are further codified in the Texas Government Code, which states: “[a] court has all the powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.” Tex. Gov’t Code § 21.001(a).

Murphy also seeks this brain scan for clemency purposes. The Due Process Clause provides baseline constitutional safeguards to the clemency

process. Ohio Adult Parole Auth. V. Woodard, 523 U.S. 272, 288-89 (1998) (O'Connor, J., concurring). Those constitutional requirements can be violated when the state inhibits an individual's ability to present his evidence in support. See, e.g., Noel v. Norris, 226 F.3d 648, 649 (8th Cir. 2003); Young v. Hayes, 218 F.3d 850, 853 (8th Cir. 2000).

This Court should also consider that this very issue is currently pending before this Court in In re University of Texas Medical Branch – Galveston, WR-91,7155-01 (Tex. Crim. App., filed May , 2022). In that case, counsel for Dillon Compton sought and obtained an ordering UTMB to perform an MRI on Compton's brain. After the order was granted, this Court granted UTMB's motion to stay the enforcement of the discovery order pending the resolution of their petition for writ of mandamus. To date, there has been no ruling on the merits of the issue.

Mandamus is proper in this case because Relator has no adequate remedy at law. Murphy has no way to appeal the trial court's ruling. State ex rel. Holmes v. Klevenhagen, 819 S.W.2d 539, 541-42 (Tex. Crim. App. 1991). Requiring a trial court to rule on the merits of a properly filed motion is a ministerial act. White v. Reiter, 640 S.W.2d 586 (Tex. Crim. App. 1982). Murphy has a clear right to the relief sought. Buntion v. Harmon, 827 S.W.2d 945 (Tex. Crim. App. 1992).

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Relator prays that the Court grant this application and issue a writ of mandamus directing Respondent to rule on the merits of Murphy's Motion for MRI and Other Associated Orders.

Respectfully submitted,

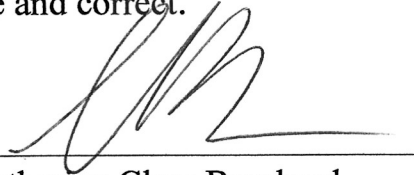
A handwritten signature in black ink, appearing to read 'C. Bernhard', is written over a horizontal line.

Catherine Clare Bernhard
P.O. Box 506
Seagoville, Texas 75159
972-294-7262
fax – 972-421-1604
cbernhard@sbcglobal.net
State Bar no. 02216575

ATTORNEY FOR RELATOR

VERIFICATION

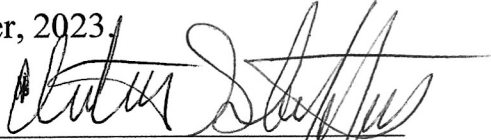
BEFORE ME, THE UNDERSIGNED AUTHORITY, on this date personally appeared Catherine Clare Bernhard, attorney of record in the above-styled and numbered cause, who upon her oath does hereby swear and affirm upon her personal knowledge that all statements of fact contained in the foregoing Writ are in all respects true and correct.



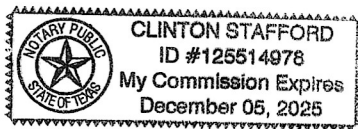
Catherine Clare Bernhard

STATE OF TEXAS
COUNTY OF DALLAS

SUBSCRIBED AND SWORN BEFORE ME, the undersigned Notary Public, on this the 15th day of September, 2023,



Notary Public in and for the
State of Texas.



CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition was served on the State and non-party UTMB by service through the court's electronic filing system to ali.nasser@oag.texas.gov and luis.suarez@oag.texas.gov, respectively, on September 15, 2023.



Attorney for Relator

CERTIFICATE OF COMPLIANCE WITH TEX. R. APP. P. 9.4

I hereby certify that the above application contains 1172 words and complies with Tex. R. App. P. 9.4(i)(2).



Catherine Clare Bernhard

APPENDIX A

F-0002424-NH

THE STATE OF TEXAS

IN THE 194TH JUDICIAL DISTRICT

VS.

COURT OF

JEDIDIAH ISAAC MURPHY

DALLAS COUNTY, TEXAS

JUDGMENT ON JURY VERDICT OF GUILTY
PUNISHMENT FIXED BY COURT OR JURY - NO PROBATION GRANTED

JULY TERM, A.D., 2001

JUDGE PRESIDING: HAROLD ENTZ

DATE OF JUDGMENT: 06/30/01

ATTORNEY
FOR STATE: GREG DAVIS/MARY MILLER

ATTORNEY
FOR DEFENDANT: JANE LITTLE, MICHAEL BYCK &
JENNIFER BALIDO LITTLE

OFFENSE
CONVICTED OF: CAPITAL MURDER

DEGREE: A CAPITAL FELONY

DATE OFFENSE COMMITTED: 10/04/00

CHARGING
INSTRUMENT: INDICTMENT

PLEA: NOT GUILTY

JURY VERDICT: GUILTY

FOREMAN: NICHOLE MARIE BRISCOE

PLEA TO ENHANCEMENT
PARAGRAPH(S): N/A

FINDINGS ON
ENHANCEMENT: N/A

FINDINGS ON
DEADLY WEAPON, THE JURY FINDS THAT DEFENDANT HEREIN USED OR EXHIBITED
BIAS OR PREJUDICE, A DEADLY WEAPON DURING THE COMMISSION OF SAID
AND/OR OFFENSE TO-WIT: FIREARM.
FAMILY VIOLENCE:

PUNISHMENT
ASSESSED BY: JURY - SEE SPECIAL ISSUES ATTACHED HERETO AND
INCORPORATED BY REFERENCE.

DATE SENTENCE
IMPOSED: 06/30/01

COSTS: YES

PUNISHMENT AND DEATH
PLACE OF

CONFINEMENT: CONFINEMENT IN THE INSTITUTIONAL DIVISION DATE TO
OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE COMMENCE: 06/30/01
AND A FINE OF - 0 -

TIME CREDITED: 101600-063001

RESTITUTION/REPARATION: NO

CONCURRENT UNLESS OTHERWISE SPECIFIED.

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitts, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this SEP 02, 2023.

FELICIA PITTS, DISTRICT CLERK
Dallas County, Texas

By: Lizabeth Jasso
Deputy

ON THIS DAY, SET FORTH ABOVE, THE ABOVE STYLED AND NUMBERED CAUSE CAME TO TRIAL. THE STATE OF TEXAS, AND DEFENDANT APPEARED BY AND THROUGH THE ABOVE-NAMED ATTORNEYS AND ANNOUNCED READY FOR TRIAL. DEFENDANT APPEARED IN PERSON IN OPEN COURT. WHERE DEFENDANT WAS NOT REPRESENTED BY COUNSEL, DEFENDANT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY WAIVED THE RIGHT TO REPRESENTATION BY COUNSEL. WHERE SHOWN ABOVE THAT THE CHARGING INSTRUMENT WAS BY INFORMATION INSTEAD OF INDICTMENT, THE DEFENDANT DID, WITH THE CONSENT AND APPROVAL OF HIS ATTORNEY WAIVE HIS RIGHT TO PROSECUTION BY INDICTMENT AND AGREE TO BE TRIED ON AN INFORMATION. ALL SUCH WAIVERS, AGREEMENTS AND CONSENTS WERE IN WRITING AND FILED IN THE PAPERS OF THIS CAUSE PRIOR TO THE DEFENDANT ENTERING HIS PLEA HEREIN. DEFENDANT IN OPEN COURT WAS DULY ARRAIGNED, AND ENTERED THE ABOVE SHOWN PLEA. WHERE SHOWN ABOVE THAT DEFENDANT ENTERED A PLEA OF GUILTY, DEFENDANT WAS ADMONISHED BY THE COURT OF THE CONSEQUENCES OF THE SAID PLEA AND DEFENDANT PERSISTED IN ENTERING SAID PLEA, AND IT PLAINLY APPEARING TO THE COURT THAT DEFENDANT IS MENTALLY COMPETENT AND SAID PLEA IS FREE AND VOLUNTARY, THE SAID PLEA WAS ACCEPTED BY THE COURT AND IS NOW ENTERED OF RECORD AS THE PLEA HEREIN OF DEFENDANT. THEREUPON A JURY WAS DULY SELECTED, IMPANELED AND SWORN, WHO, HAVING HEARD THE CHARGING INSTRUMENT, AS SHOWN ABOVE PRESENTED, AND DEFENDANT'S PLEA THERETO, AND HAVING HEARD THE EVIDENCE SUBMITTED, AND HAVING BEEN DULY CHARGED BY THE COURT AS TO THEIR DUTY TO DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT AND AFTER HAVING HEARD THE ARGUMENTS OF COUNSEL RETIRED IN CHARGE OF THE PROPER OFFICER TO CONSIDER OF THEIR VERDICT, AND AFTERWARD WERE BROUGHT INTO OPEN COURT, BY THE PROPER OFFICER, DEFENDANT AND HIS COUNSEL BEING PRESENT, AND IN DUE FORM OF LAW RETURNED INTO OPEN COURT THE ABOVE SHOWN VERDICT, WHICH WAS RECEIVED AND ACCEPTED BY THE COURT, AND IS HERE AND NOW ENTERED UPON THE MINUTES OF THE COURT.

AND WHEN SHOWN ABOVE THAT THE CHARGING INSTRUMENT CONTAINS ENHANCEMENT PARAGRAPHS(S), WHICH WERE NOT WAIVED OR DISMISSED, THE COURT, AFTER HEARING THE DEFENDANT'S PLEA TO SAID PARAGRAPH(S) AS SET OUT ABOVE AND AFTER HEARING FURTHER EVIDENCE ON THE ISSUE OF PUNISHMENT, THE COURT, OR JURY, MAKES ITS FINDING AS SET OUT ABOVE. IF TRUE, THE COURT OR JURY, IS OF THE OPINION AND FINDS DEFENDANT HAS BEEN HERETOFORE CONVICTED OF SAID OFFENSE(S) ALLEGED IN THE SAID ENHANCEMENT PARAGRAPH(S) AS MAY BE SHOWN ABOVE.

WHEN IT IS SHOWN ABOVE THE DEFENDANT IS GUILTY OF THE OFFENSE SET FORTH ABOVE, IT IS CONSIDERED BY THE COURT THAT SAID DEFENDANT IS ADJUDGED TO BE GUILTY OF THE OFFENSE SET FORTH ABOVE, AND THAT DEFENDANT COMMITTED THE OFFENSE ON THE DATE SET FORTH ABOVE AS CHARGED IN THE INSTRUMENT SHOWN ABOVE, AND THAT DEFENDANT WAS PREVIOUSLY CONVICTED WHEN SHOWN ABOVE IN THE MANNER ABOVE, AND THAT SAID DEFENDANT BE PUNISHED AS HAS BEEN DETERMINED, SAID PUNISHMENT BEING ASSESSED BY THE ABOVE SHOWN ASSESSOR OF PUNISHMENT, AS ELECTED IN WRITING BY DEFENDANT, AND BE CONFINED IN THE PLACE OF CONFINEMENT SHOWN ABOVE FOR THE TERM OF TIME SET FORTH ABOVE, AND THAT THE STATE OF TEXAS DO HAVE AND RECOVER OF THE SAID DEFENDANT ALL COSTS IN THIS PROSECUTION EXPENDED INCLUDING ANY FINE SHOWN FOR WHICH LET EXECUTION ISSUE. THE COURT FURTHER MAKES ITS FINDING AS TO DEADLY WEAPON AS SET FORTH ABOVE BASED UPON THE JURY'S VERDICT OR THE FINDINGS OF THE COURT WHEN PUNISHMENT FIXED BY THE COURT. THE COURT MAKES ITS FINDINGS AS TO FAMILY VIOLENCE AND BIAS OR PREJUDICE AS SET FORTH ABOVE.

WHEN IT IS SHOWN ABOVE THAT RESTITUTION HAS BEEN ORDERED, BUT THE COURT DETERMINES THAT THE INCLUSION OF THE VICTIM'S NAME AND ADDRESS IN THE JUDGMENT IS NOT IN THE BEST INTEREST OF THE VICTIM, THE PERSON OR AGENCY WHOSE NAME AND ADDRESS IS SET OUT IN THIS JUDGMENT WILL ACCEPT AND FORWARD THE RESTITUTION PAYMENTS TO THE VICTIM.

AND WHEN IT IS SHOWN BELOW THAT PAYMENT OF THE COSTS OF LEGAL SERVICES PROVIDED TO THE DEFENDANT IN THIS CAUSE HAS BEEN ORDERED, THE COURT FINDS THAT THE DEFENDANT HAS THE FINANCIAL RESOURCES TO ENABLE THE DEFENDANT TO OFFSET SAID COSTS IN THE AMOUNT ORDERED.

THEREUPON THE SAID DEFENDANT WAS ASKED BY THE COURT WHETHER HE HAD ANYTHING TO SAY WHY SAID SENTENCE SHOULD NOT BE PRONOUNCED AGAINST HIM, AND HE ANSWERED NOTHING IN BAR THEREOF, AND IT APPEARING TO THE COURT THAT THE DEFENDANT IS MENTALLY COMPETENT AND UNDERSTANDING OF THE PROCEEDINGS.

IT IS, THEREFORE, CONSIDERED AND ORDERED BY THE COURT, IN THE PRESENCE OF DEFENDANT, AND HIS ATTORNEY, THAT SAID JUDGMENT AS SET FORTH ABOVE, IS HEREBY IN ALL THINGS APPROVED AND CONFIRMED, AND THAT DEFENDANT, WHO HAS

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pire, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this 8th day of August, 2023.

FELICIA PIRE, DISTRICT CLERK
Dallas County, Texas

Lizabeth Jasso

BEEN ADJUDGED GUILTY OF THE ABOVE NAMED OFFENSE, AS SHOWN ABOVE, AND WHOSE PUNISHMENT HAS BEEN ASSESSED BY THE COURT OR THE JUDGE AS SHOWN ABOVE, THAT SAID DEFENDANT BE PUNISHED IN ACCORDANCE WITH THE PUNISHMENT SET FORTH ABOVE, AND THAT DEFENDANT SHALL BE DELIVERED BY THE SHERIFF TO THE DIRECTOR OF THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, OR OTHER PERSON LEGALLY AUTHORIZED TO RECEIVE SUCH CONVICTS FOR THE PUNISHMENT ASSESSED HEREIN, AND SAID DEFENDANT SHALL BE CONFINED FOR THE ABOVE-NAMED TERM IN ACCORDANCE WITH THE PROVISIONS OF LAW GOVERNING SUCH PUNISHMENTS. IT IS FURTHER ORDERED THAT THE DEFENDANT PAY THE FINE, COURT COSTS, COSTS AND EXPENSES OF LEGAL SERVICES PROVIDED BY THE COURT APPOINTED ATTORNEY IN THIS CAUSE, IF ANY, AND RESTITUTION OR REPARATION, AS SET FORTH HEREIN, FOR WHICH LET EXECUTION ISSUE.

DEFENDANT IS HEREBY ORDERED REMANDED TO JAIL UNTIL SAID SHERIFF CAN OBEY THE DIRECTIONS OF THE JUDGMENT.

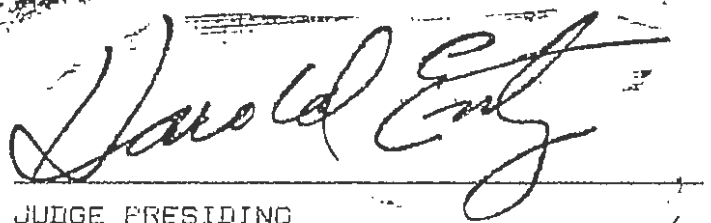
FOLLOWING THE DISPOSITION OF THIS CAUSE THE DEFENDANT'S FINGERPRINT WAS, IN OPEN COURT, PLACED UPON A CERTIFICATE OF FINGERPRINT. SAID CERTIFICATE IS ATTACHED HERETO AND IS INCORPORATED BY REFERENCE AS A PART OF THIS JUDGMENT.

WHEN REQUIRED, A PRESENTENCE INVESTIGATION WAS CONDUCTED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF LAW.

DEFENDANT EXCEPTS AND GIVES NOTICE OF APPEAL TO THE COURT OF APPEALS, FIFTH DISTRICT OF TEXAS AT DALLAS.

COURT COSTS IN THE AMOUNT OF \$242.25

*Immediately upon release, defendant must report in person to the Felony Collections Dept., 2nd fl., Rm. C2-3, Crowley Courts Bldg., Dallas, TX, for payment arrangement of court ordered costs, fines and/or attorney fees.



JUDGE PRESIDING

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitre, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this SEP 03 2023.

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Lizabeth Jasso

APPENDIX B

Cause No. F00-02424-M

STATE OF TEXAS	§	IN THE 194TH DISTRICT COURT
	§	
v.	§	OF
	§	
JEDIDIAH MURPHY	§	DALLAS COUNTY, TEXAS

EXECUTION ORDER

You, JEDIDIAH MURPHY, were indicted by the Grand Jury of Dallas County, Texas, and charged with the offense of capital murder in cause number F00-02424-NM. A jury in this Court returned a verdict finding you guilty of the offense of capital murder on June 11, 2001, in cause number F00-02424-NM. On June 30, 2001, the same jury in this Court returned answers to the special issues, submitted to the jury at punishment pursuant to Article 37.071 of the Texas Code of Criminal Procedure, and this Court, in accordance with the jury's findings at punishment, assessed your punishment at death. The judgment of this Court was reviewed by the Texas Court of Criminal Appeals on direct appeal and it was affirmed by that court on June 25, 2003, with mandate issued on September 10, 2003. Subsequently, on March 25, 2009, the Court of Criminal Appeals denied your initial application for writ of habeas corpus. The Court of Criminal Appeals also dismissed your subsequent application for writ of habeas corpus on March 21, 2012. Thereafter, the District Court for the Northern District of Texas, Dallas Division, denied your federal petition for writ of habeas corpus on January 23, 2017, and the United States Court of Appeals for the Fifth Circuit granted your application for a Certificate of Appealability on April 20, 2018. The United States Court of Appeals for the Fifth Circuit affirmed the judgment of the district court on August 24, 2018. Afterwards, the United States Supreme Court denied your petition for writ of certiorari on February 25, 2019. This Court now proceeds with the judgment and sentence in your case and now enters the following order.

IT IS HEREBY ORDERED by this Court that you, JEDIDIAH MURPHY, having been adjudged guilty of capital murder and having been assessed punishment at death, in accordance with the findings of the jury and the judgment of this Court, shall at some time after the hour of 6:00 p.m. on the 10th day of October, 2023, be put to death by an executioner designated by the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, who shall cause a substance or substances in a lethal quantity to be intravenously injected into your body sufficient to cause your death and until your death, such execution procedure to be determined and supervised by the said Director of the Correctional Institutions Division of the Texas Department of Criminal Justice.

It is ORDERED that the Clerk of this Court shall issue a death warrant, in accordance with this sentence, to the Director of the Correctional Institutions

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pina, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this 14 day of JANUARY, 2023.

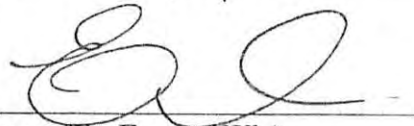
FELICIA PINA, DISTRICT CLERK
Dallas County, Texas

By Lizabeth Jasso
Deputy

Division of the Texas Department of Criminal Justice, and shall deliver such warrant to the Sheriff of Dallas County, Texas to be delivered by him to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice together with the defendant, JEDIDIAH MURPHY, if not previously delivered.

The Defendant, JEDIDIAH MURPHY, is hereby remanded to the custody of the Sheriff of Dallas County, Texas, to await transfer to Huntsville, Texas, if not previously delivered, and the execution of this sentence of death.

DONE AND ENTERED this 21 day of April, 2023.

A handwritten signature in black ink, appearing to be 'E. White', written over a horizontal line.

Honorable Ernest White
Presiding Judge
194th District Court
Dallas County, Texas

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitts, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this SEP 2 2023.

FELICIA PITTS, DISTRICT CLERK
Dallas County, Texas

By: Lizabeth Jasso
Deputy

DEATH WARRANT

Cause No. F00-02424-M

STATE OF TEXAS	§	IN THE 194TH DISTRICT COURT
	§	
v.	§	OF
	§	
JEDIDIAH MURPHY	§	DALLAS COUNTY, TEXAS

TO THE DIRECTOR OF THE CORRECTIONAL INSTITUTIONS DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND TO THE SHERIFF OF DALLAS COUNTY, TEXAS:

On the 11th day of June 2001, the above-named defendant, in the above-styled and numbered cause, was convicted of the offense of capital murder. On the 30th day of June 2001, the Court sentenced the above-named defendant to death in accordance with the findings of the jury, pursuant to the Texas Code of Criminal Procedure.

The Court, having received the Court of Criminal Appeals's mandate affirming the above-named defendant's conviction for capital murder and having received notice of the Court of Criminal Appeals's denial of the defendant's initial application for writ of habeas corpus, sentenced the above-named defendant to death for the offense of capital murder and ORDERS that the execution be carried out on Tuesday, the 10th day of October 2023, at any time after the hour of 6:00 p.m. at the Correctional Institutions Division of the Texas Department of Criminal Justice at Huntsville, Texas.

The Sheriff of Dallas County, Texas, is hereby commanded to transport the defendant to the Correctional Institutions Division of the Texas Department of Criminal Justice and deliver the defendant, if not previously delivered, and this warrant to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice for the purpose of executing this warrant, and to take from the Director the proper receipt for the defendant, if not previously delivered, and the sheriff will return the receipt to the office of the District Clerk of Dallas County, Texas.

The Director of the Correctional Institutions Division of the Texas Department of Criminal Justice is hereby commanded to receive from the Sheriff the defendant, if not previously delivered, and this warrant, and to give his receipt to the Sheriff, and to safely keep the defendant and to execute the sentence of death at any time after the hour of 6:00 p.m. on the day and date specified in paragraph two of this warrant, by causing a substance or substances in a lethal quantity to be intravenously injected into the body of the defendant sufficient to cause death, and the injection of the substance or substances into the body of the defendant to continue

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pittre, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this 20 day of SEPTEMBER, 2023.

FELICIA PITTRE, DISTRICT CLERK
Dallas County, Texas

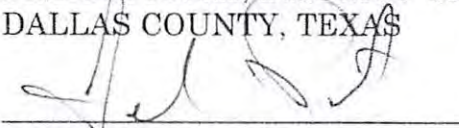
By Lizabeth Jasso
Deputy

until the defendant is deceased, obeying all laws of the State of Texas with reference to such execution.

Witness my hand and seal of the 194th District Court of Dallas County, Texas, at my office in the City of Dallas, Texas, on the 15th day of May, 2023.



FELICIA PITRE, DISTRICT CLERK
DALLAS COUNTY, TEXAS


DISTRICT CLERK

RETURN

The Sheriff of Dallas County, Texas, received this writ on the _____ day of _____, 2023, at _____ M. and executed the same by delivering the within-named defendant, if not previously delivered, in person and this warrant to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice on the _____ day of _____, 2023, and by taking his receipts for the said defendant, if not previously delivered, and this warrant, which receipts are hereto attached do here now make my return on this writ this _____ day of _____, 2023.

MARIAN BROWN, SHERIFF
DALLAS COUNTY, TEXAS

DEPUTY

On this the _____ day of _____, 2023, the following papers related to cause number F00-02424-M, styled THE STATE OF TEXAS v. JEDIDIAH MURPHY, were received from the Sheriff of Dallas County, Texas.

1. One original of **DEATH WARRANT** to be delivered to the Director of the Correctional Institutions Division of the Texas Department of Criminal Justice.
2. One certified Execution Order.

SIGNATURE OF TDCJ OFFICIAL

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitre, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this 23 day of SEPTEMBER, 2023.

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Lizabeth Jasso
Deputy

APPENDIX C

CAUSE NO. F00-02424

THE STATE OF TEXAS	§	IN THE 194 TH JUDICIAL
V.	§	DISTRICT COURT
JEDIDIAH MURPHY	§	DALLAS COUNTY, TEXAS
	§	

ORDER

Whereas, Jedidiah Murphy was sentenced to death after being convicted of capital murder in this cause in the 194th Judicial District Court of Dallas County.

Whereas, the Court of Criminal Appeals affirmed Mr. Murphy's conviction on June 25, 2003, and the Court of Criminal Appeals denied Mr. Murphy's initial state habeas application on March 25, 2009.

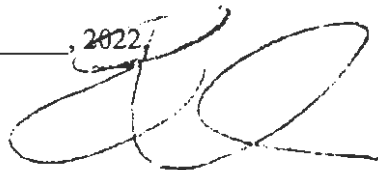
Whereas, the criteria for setting an execution have been met. *See* Tex. Code Crim. Proc. Art. 43.141(a).

Whereas, the State of Texas has filed a motion requesting an execution date and is now requesting a hearing on its motion to set an execution date for Mr. Murphy.

IT IS THEREFORE THE ORDER OF THIS COURT, that Catherine Bernhard is appointed to represent the Defendant at the hearing on the State's motion requesting an execution date, as well as, any other post-conviction matter until the Defendant's sentence is complete.

The Clerk of the Court is **ORDERED** to immediately transmit a copy of this order to the Defendant, Jedidiah Murphy, Defendant's attorney, Catherine Bernhard, and to counsel for the State, Ali M. Nasser, Assistant Attorney General.

Signed this 21st day of Nov, 2022



ERNEST WHITE, JUDGE
194TH JUDICIAL DISTRICT COURT
DALLAS COUNTY, TEXAS

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitre, District Clerk of
Dallas County, Texas, do hereby certify
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copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this SEP 15 2023

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Elizabeth Jasso
Deputy

APPENDIX D

TRIAL COURT NO. F00-02424-M

JEDIDIAH MURPHEY	*	IN THE 194 th JUDICIAL
V.	*	DISTRICT COURT
STATE OF TEXAS	*	DALLAS COUNTY, TEXAS

MOTION REQUESTING MRI AND ASSOCIATED ORDERS

**THIS IS A DEATH PENALTY CASE WITH AN EXECUTION DATE
CURRENTLY SET FOR OCTOBER 10, 2023**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Defendant in the above-styled and numbered cause, by and through his attorney of record, and moves this Court pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, Sections 9, 10, 13, and 19 of the Texas Constitution, and Articles 26.05, 26.052, 46.05 and 11.071 of the Texas Code of Criminal Procedure for funds to be used to obtain an MRI for TDCJ inmate Jedidiah Murphy, No. 999392, and associated orders to perform the scan and transport the inmate for such scan. In support of said motion, Defendant would show:

I.

Defendant Murphy was convicted of capital murder and sentenced to death. Undersigned counsel has been appointed to represent Murphy in post-conviction matters. Counsel has a constitutional and statutory duty to investigate the legality of Murphy's confinement and impending execution.

THE STATE OF TEXAS
COUNTY OF DALLAS

Felicia Pitre, District Clerk of
Dallas County, Texas, **DALLAS** hereby certify
that the foregoing is a true and correct
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on file in my office.

Witness my official hand and seal on
office, this **SEP 15 2023**

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Lizabeth Jasso
Deputy

II.

Pursuant to counsel's duties to investigate any potential claims, including any potential claim pursuant to Article 46.05 of the Texas Code of Criminal Procedure, Murphy is requesting that he be permitted to undergo a brain scan or MRI to be conducted by the University of Texas Medical Branch (UTMB) on a date prior to September 19, 2023. Defendant further requests that the Texas Department of Criminal Justice (TDCJ) be ordered to transport Defendant to and from any scheduled scan.

III.

In support of this request, Defendant notes that he has a long and well-documented history of mental illness and alcohol abuse. Recently, Murphy was examined by neurologist Dr. Pamela Blake. Her report is attached to this motion as Exhibit A. Based on Murphy's unusual responses to a number of tests, Dr. Blake recommended "neuroimaging in the form of an MRI scan of the brain with contrast to rule out a structural lesion".

IV.

In order to conduct this imaging, Murphy requests that this Court issue an order requiring UTMB to schedule such a scan on a date prior to September 19, 2023, and requiring TDCJ to transport Murphy to and from this scheduled scan.

V.

Due to the exigent and urgent nature of this request and the status of this case, Counsel proposes that any hearing required by the court on this matter be conducted via zoom or other electronic means.

THE STATE OF TEXAS
COUNTY OF DALLAS

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office, this SEP 15 2023

FELICIA PITRE, DISTRICT CLERK
Dallas

By: Elizabeth Jasso
Deputy

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that the Court promptly set a hearing in this matter and thereafter grant this motion and enter the requested orders.

Respectfully submitted,



Catherine Clare Bernhard
P.O. Box 506
Seagoville, Texas 75159
972-294-7262
fax – 972-421-1604
cbernhard@sbcglobal.net
State Bar No. 02216575

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify to the Court that a true and correct copy of the above and foregoing Motion was served on the State by service through the court's electronic filing system to ali.nasser@oag.texas.gov on September 1, 2023.

Additionally, service was provided to non-parties UTMB and TDCJ by placing a copy of this motion in the U.S. mail to:

UTMB – Department of Legal Affairs
301 University Blvd.
Mail Rt. 0171
Galveston, Texas 77558

THE STATE OF TEXAS
COUNTY OF DALLAS
I, Felicia Rose, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this SEP 13 2023

FELICIA ROSE, DISTRICT CLERK
Dallas County, Texas
Lizabeth Jass
Deputy

TDCJ
Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342



THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitre, District Clerk of
Dallas County, Texas, do hereby certify
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on file in my office.

Witness my official hand and seal of
office, this _____ day of _____, 2023.

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Elizabeth Jasso

Deputy

Pamela Blake, MD, FAHS
Diplomate, American Board of Psychiatry and Neurology (Neurology)
2711 Ferndale Street
Houston, TX 77098

August 20, 2023

Neurological Evaluation of Jedidiah Murphy

I was asked to evaluate Jedidiah Murphy to determine if a neurological condition may be present that may affect his function and behavior; specifically, Mr. Murphy wonders if he should undergo neuroimaging. He states that he thinks there is 'something wrong with my brain.' I conducted an in-person interview of Mr. Murphy at the Polunsky Unit of the Texas Department of Criminal Justice on August 15, 2023. Additionally, the following sources of information were reviewed to prepare this report:

- Psychological evaluation conducted by Mary Connell, Ed.D. (report undated, however prepared for the 2001 trial)
- Medical records from Glen Oaks Hospital for numerous psychiatric admissions from 8/1999-10/1999
- Medical records from Timberlawn Mental Health System for admission in October 1999
- Medical records from the Dallas County Jail
- UTMB Correctional Managed Care Medical Records
- UTMB List of Medications Prescribed
- Patient Restriction History

SOCIAL HISTORY

Mr. Murphy was born to Roy Don Kines and his wife, Hope Kines. A total of four children were born to this union and Hope also had older children from a prior relationship. When Mr. Murphy was about four years of age, in 1975, his mother left the home, taking some of the older children with her. Mr. Murphy lived with his father, who was physically abusive, for a few years, then went to live at a Childrens' Home, then to a foster home with the Tolar family that turned out to be very abusive, followed by a foster care placement, then finally placement into the Murphy home. The Murphys adopted Mr. Murphy, and the biological son of the Murphys described to an examining psychologist in 2001 the physical abuse that he and Mr. Murphy would suffer at the hands of the elder Mr. Murphy, along with the violence between Mr. and Mrs. Murphy. Mr. Murphy lived in the Murphy home until the age of 17. He did graduate from

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Witness my official hand and
office, _____

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Elizabeth Jasso
Deputy

high school and learned the trade of welding. He worked at a number of jobs in this field, and he eventually became involved in a relationship with a woman named Chelsea Willis. Mr. Murphy and Chelsea have a daughter, Alyssa, who was born in July 1997.

MEDICAL AND PSYCHIATRIC HISTORY

The available records indicate that Mr. Murphy was admitted to a psychiatric facility called Glen Oaks on 8/24/99, when he sought help for repeated visual hallucinations of seeing snakes in his apartment. Mr. Murphy reported that he called police twice to report the snakes, and twice the police came and told him that there were no snakes. It is not clear exactly how Mr. Murphy ended up at the hospital – if he was taken by police or by ambulance. The admission diagnoses was Major Depressive Disorder. During that initial, 15-day-long stay from 8/24/99 – 9/8/99, Mr. Murphy was closely observed by a psychiatrist, Dr. Estabrook, and the staff. In addition to his visual hallucinations, which occurred sporadically during the hospitalization, Mr. Murphy exhibited bizarre and at times aggressive behaviors, at least sometimes triggered by hearing voices that were frightening to him. Dr. Estabrook began to suspect a dissociative disorder, and he eventually confirmed this diagnosis, as well as the presence of alter personalities. Medications were started, including Seroquel, an atypical antipsychotic agent, at the dose of 100 mg a day, which is a standard dose.

Mr. Murphy was repeatedly admitted to Glen Oaks over the next few weeks, usually checking himself out early. His fourth and final admission in the available records indicate that he was discharged on October 6, 1999, with discharge diagnoses of Bipolar II Disorder, Severe, with suicidal features, and Dissociative Identity Disorder. The discharge medications included Seroquel 100 mg twice a day, Haldol (another strong antipsychotic agent) 5 mg at bedtime, Depakote (an anticonvulsant used as a mood stabilizer) 250 mg three times a day, and Effexor 75 mg daily. Mr. Murphy was supposed to receive outpatient mental health care at Terrell MHMR. It is not clear in the available records if this occurred. There was a brief admission at another psychiatric facility called Timberlawn from 10/9/1999 – 10/12/1999, with the records essentially reiterating the history and findings from the Glen Oaks admissions. The discharge diagnoses included Major Depressive Disorder and Dissociative Identity Disorder, and at the time of discharge, the Seroquel dose had been increased to 400 mg daily, which is within the higher range of recommended daily dosage, along with Klonopin 1 mg bid, Serzone 50 mg in AM and 100 mg in PM (gen nefazodone - an atypical antidepressant that is now rarely used due to liver toxicity; it was on the market from 1993-2004, and was used to treat MDD, aggressive behavior, anxiety, and panic disorder), and Depakote 250 three times a day.

The instant offense occurred less than a year following this discharge.

Following the instant offense, Mr. Murphy was housed at the Dallas Jail. The notes from the jail continue to report similar symptoms of auditory hallucinations. On 2/27/2001, Mr. Murphy experienced a likely pseudoseizure, an event that involves seizure-like motor and behavioral changes, however, which is triggered not by abnormal electrical activity in the brain, but rather by extreme emotional distress. The presence of pseudoseizures is commonly seen in the setting of an abuse history. The notes indicate that his Seroquel dose was increased to 1200 mg, which is a very high dosage, exceeding the recommend maximum dose of 800 mg. On 5/7/2001, Mr. Murphy made a suicide attempt, in which

ALL STATE OF TEXAS
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FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Lizabeth Jasso
Deputy

he slashed the side of his neck, requiring 20-30 sutures, and his wrist, requiring 7-10 sutures. Mr. Murphy went to trial shortly after this event. He was found guilty and sentenced to death in July, 2001.

There are no records of the drug Seroquel being used while Mr. Murphy has been at Polunsky, although he was started on Abilify, another anti-psychotic agent, in 2019.

NEUROLOGICAL EXAMINATION

General. Mr. Murphy was shackled and handcuffed during our visit. He was alert and attentive.

Mental status. Mr. Murphy was alert and attentive and was easily forthcoming with history. He was tearful at times. There was marked anxiety that became very prominent and interfered with his function, as noted below. The Mini-Mental status examination was administered with the exception of one item, by oversight. The raw score was 21.5/25, which corrects to 25.8/30. This score is low, however, I do not consider the score on the MMSE to be valid, however, because Mr. Murphy exhibited significant anxiety that diminished his performance. One of the items on the MMSE is a 'three step command,' in which a piece of paper is proffered to the examinee, with the instruction "Take this paper in your right hand, fold it in half, and place it on the floor." Mr. Murphy became confused and questioned several times how he was to take the paper and what he was to do with it. I have not experienced this level anxiety in the MMSE, despite having administered it hundreds of times over my career.

Physical examination. The cranial nerve examination was normal. The motor examination, limited by the restraints, revealed mild weakness in the intrinsic hand muscles. The remainder of the motor examination showed full strength. The reflexes were intact and normal and symmetric.

Frontal lobe testing. Several tests are administered to determine the function of the frontal lobes, which are the part of the brain most relevant to behavioral control. I administered first a test called the **anti-saccade task**. A saccade is a rapid eye movement which can be made in a variety of circumstances, including as a volitional movement to direct gaze to an area of interest, or in a reflexive movement toward a novel visual or auditory stimulus. It is possible to over-ride a reflexive saccade, if the frontal lobe function is intact. The anti-saccade task involves sitting across from the examinee and holding up the examiner's right and left hand. When I perform the anti-saccade task, in order to help the examinee become familiar with the task, I first administer trials of a simple 'direct saccade' task, in which I instruct the examinee to first look at me. I then raise the index finger of my right or left hand and instruct the examinee to look at the raised finger then to look back at my face. I repeat that for ten trials, with no further prompting. After ten of these trials, I then proceed to the anti-saccade task, in which the examinee is prompted to look at the hand *opposite* to the one on which the finger is raised, then to look back at me. The anti-saccade task therefore involves the examinee registering the novel visual stimulus and then suppressing the reflex to look at that finger, and instead, to look away. The ability to suppress the instinct to look at the raised finger is the aspect that engages the frontal lobe. I have administered the anti-saccade task hundreds of times in my career, in both the clinical and the forensic setting. The usual response is for examinees to perform very well, usually perfectly, on the simple, direct saccade task, in which it is only required that the examinee look at the raised finger. Any difficulties that may reflect frontal lobe impairment emerge when the anti-saccade portion is administered.

THE STATE OF TEXAS
COUNTY OF DALLAS

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Witness my official hand and seal of
office, this SEP 15 2023

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Lizbeth Jasso
Deputy

Mr. Murphy responded to the saccade task in a bizarre way that I have never previously encountered. He became very anxious when the simple instructions of the direct saccade task were explained to him, visibly tremulous, sweating and stammering. He was unable to follow my simple direction of "Look at my raised finger then look back at my face." Instead, he began making saccadic eye movements that frantically moved from one of my hands to the other, interrupted by looking at me. The more I tried to instruct him in the simple task, the more anxious he became and the more mistakes he made. I stopped the instructions, waited a few minutes, and we tried again. He was finally able to perform it with enough accuracy for me to be sure that he understood the task. We then moved on to the anti-saccade portion. I expected that Mr. Murphy would struggle with this more challenging task, and he did. Again, he became highly anxious, stammering and requesting that I repeat the directions several times. When I finally felt assured that he understood the directions, I administered the anti-saccade task. He performed poorly on the task, only performing the eye movement correctly in four of ten trials. As with Mr. Murphy's low score on the MMSE, it is not possible to consider the high error rate on the anti-saccade test to necessarily be a function of frontal lobe impairment, as his performance was so diminished by his anxiety.

I next administered the **Luria** three-step hand movement task, which involves being trained in and then performing a series of three steps of movement on of hand; the three steps are tapping on the thigh the little-finger side of the hand with fingers closed, then tapping once with fingers extended, then tapping the open hand palm-side-down on the thigh. As with the anti-saccade task, Mr. Murphy became highly anxious and required much greater-than-usual instruction. He was finally able to perform the movement, however his movements were very slow and with multiple errors. A two-step Luria hand movement task was administered, which involves making alternating hand movements, tapping the hand with the fingers extended on one hand and closed on the other hand, then alternating with each tap. Mr. Murphy was able to perform this movement very slowly and with some errors.

A measure of **abstractions** was made. Mr. Murphy was able to interpret proverbs incompletely, missing the depth of meaning, for example, Don't cry over spilled milk = 'You can't fix it,' missing the inconsequential nature of the circumstance. He stated a cat and a dog are alike as they are both animals, rather than pets, although he did respond that an apple and an orange are both fruit. **Verbal fluency** was intact, as Mr. Murphy was able to name 15 items beginning with the letter F in one minute, which is higher than the cut-off score of 14 for normal.

DIAGNOSTIC IMPRESSION

Mr. Murphy has significant psychiatric disease, which is well-documented in the records that are available to me, which begin in 1999. Records of psychiatric symptoms prior to 1999 are not available, however collateral sources of information, including his mother and brother, point to the presence of mental illness earlier in Mr. Murphy's life. The formal psychiatric assessments, based on Mr. Murphy's report of symptoms, indicate the presence of a Dissociative Identity Disorder. Dissociative Identity Disorder is well-recognized to occur in the setting of a history of prior trauma, which is clearly documented in the reports of family members who were around Mr. Murphy in the time that the abuse was occurring. In addition to Mr. Murphy's report of lapses of time and poor memory, there are several factors that are consistent with, although not necessarily diagnostic of, a dissociative identity disorder. These include (1) Dr. Estabrook's observations during the multiple stays at Glen Oak of Mr. Murphy

THE STATE OF TEXAS
COUNTY OF DALLAS

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Witness my official hand and seal
this 15th day of September, 2023.

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

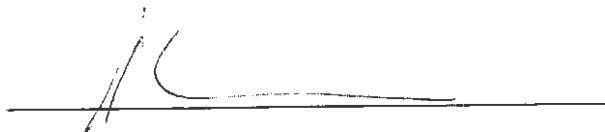
By: Lizabeth Jasso

Deputy

being 'scared' and reporting the presence of a personality in him, taunting and berating him, and (2) the nurses' reports of Mr. Murphy's bizarre behaviors (lying on the bathroom floor, under the sink) and at times aggressive behaviors, including threatening behaviors toward the hospital nursing staff. These occurred in September 1999, less than one year prior to the instant offense. The records report the marked changes in mood and behavior that Mr. Murphy could exhibit, with mood swings occurring within an hour.

Dissociative disorders are associated with impairments in memory and impairments in behavioral control, as stressful situations can trigger dissociation. In addition to the dissociative disorder that is well-documented in the notes, Mr. Murphy also exhibits profound anxiety. His heightened anxiety limited his ability to function in the simple examination that I administered.

Given the highly unusual nature of Mr. Murphy's symptoms, it is appropriate to obtain neuroimaging in the form of an MRI scan of the brain with contrast to rule out a structural lesion that may be contributing to these findings and his symptoms.

A handwritten signature in black ink, appearing to read 'P. Blake', is written over a horizontal line.

Pamela Blake, MD, FAHS

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitre, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal on this
office, this 15 day of SEP 2023.

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Lizabett Jasso

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Catherine Bernhard

Bar No. 02216575

cbernhard@sbcglobal.net

Envelope ID: 79147231

Filing Code Description: MOTIONS - MISCELLANEOUS

Filing Description: MOTION - REQUESTING MRI

Status as of 9/4/2023 3:34 PM CST

Associated Case Party: JEDIDIAHISAACMURPHY

Name	BarNumber	Email	TimestampSubmitted	Status
Catherine Clare Bernhard	2216575	cbernhard@sbcglobal.net	9/1/2023 9:37:34 AM	SENT

Associated Case Party: STATE OF TEXAS

Name	BarNumber	Email	TimestampSubmitted	Status
Ali Nasser		ali.nasser@oag.texas.gov	9/1/2023 9:37:34 AM	SENT

THE STATE OF TEXAS
COUNTY OF DALLAS

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Dallas County, Texas, do hereby certify
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Witness my official hand and seal of
office, this SEP 15 2020

FELICIA PITTRE, DISTRICT CLERK
Dallas County, Texas

By: Lizabeth Jasso
Deputy

APPENDIX E

Cause No. F00-02424-M

STATE OF TEXAS	§	IN THE 194TH DISTRICT COURT
	§	
v.	§	OF
	§	
JEDIDIAH MURPHY	§	DALLAS COUNTY, TEXAS

**STATE'S OPPOSITION TO MOTION REQUESTING MRI AND
ASSOCIATED ORDERS**

Jedidiah Murphy is an inmate under a sentence of death. By order of this Court, his execution is currently scheduled for October 10, 2023. Murphy currently does not have any pending litigation before this Court.¹ He now seeks an order from this Court granting funding for an MRI scan and ordering the Texas Department of Criminal Justice (TDCJ) to transport Murphy for the scan. *See* Motion for Scan (Mot.). Murphy requests that the scan be done by the University of Texas Medical Branch by September 19, 2023. *Id.* at 2. In support, Murphy attaches the results of an August 2023 neuropsychological evaluation conducted by Dr. Pamela Blake. *See* Mot. Ex. A. According to Murphy's motion, "[b]ased on Murphy's unusual responses to a number of tests, Dr. Blake recommend[s] 'neuroimaging in the form of an MRI scan of the brain with contrast to rule out a structural lesion.'" Mot. at 2.

This Court lacks jurisdiction to grant Murphy's motion. "When a conviction has been affirmed on appeal and the mandate has issued, general jurisdiction is not restored in the trial court." *State v. Patrick*, 86 S.W.3d 592, 595 (Tex. Crim. App.

¹ Murphy has filed a federal lawsuit under 42 U.S.C. § 1983 relating to the disposal of his body after execution. *See* Complaint, 4:23-cv-03033 (S.D. Tex. Aug. 17, 2023). That lawsuit is currently pending. He has also appealed this Court's denial of DNA testing to the Texas Court of Criminal Appeals (CCA). That appeal is also currently pending. *See Murphy v. State*, AP-77,112 (Tex. Crim. App. 2023).

THE STATE OF TEXAS
COUNTY OF DALLAS

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Witness my official hand and seal of
office this SEP 13 2023

FELICIA PITTER, DISTRICT CLERK
Dallas County, Texas

By: Elizabeth Jasso
Deputy

2002). “The trial court has special or limited jurisdiction to ensure that a higher court’s mandate is carried out and to perform other functions specified by statute, such as finding facts in a habeas corpus setting or . . . determining entitlement to DNA testing.” *Id.*

No such statutory authority has been invoked here. Murphy has not filed an application for habeas corpus relief under article 11.071 of the Texas Code of Criminal Procedure. And even if he did, the Court would still lack jurisdiction to act until the CCA determined that the requirements of the subsequent-writ bar had been met. *See* Tex. Code Crim. Proc. art. 11.071 § 5. He hasn’t filed a new motion for DNA testing under Chapter 64 of the Texas Code of Criminal Procedure. And while his motion mentions probing potential competency-to-be-executed claims under article 46.05, Mot. at 2, Murphy has not filed such a motion under that article. *See* Tex. Code Crim. Proc. art. 46.05(b) (granting the trial court jurisdiction over motions filed under article 46.05).²

Therefore, Murphy asks this Court to act without jurisdiction, which it cannot do. In *Patrick*, the trial court ordered DNA testing that was “based neither upon Chapter 64 nor upon a pending application for a writ of habeas corpus.” *Patrick*, 86

² The lack of clarity on why this scan is necessary is also concerning, considering that a “court order requiring a State to transport a prisoner to a public setting . . . a medical center for testing . . . may [] present serious risks to public safety.” *Shoop v. Twyford*, 142 S.Ct. 2037, 2045 (2022). As evidence of such risks, the Supreme Court in *Shoop* noted that, in 2022, “a convicted murderer escaped from a prison bus transporting him to a medical appointment by breaking out of his restraints and stabbing the bus driver. He was on the run for three weeks—and allegedly killed a family of five during that time—before dying in a shootout with the police.” *Id.* at 2045 n.2 (citing M. Ives & A. Traub, Hunt for Escaped Murderer Ends in Shootout With Police in Texas, N. Y. Times, June 4, 2022). “Commanding a State to take these risks so that a prisoner can *search for unusable evidence* would not be a ‘necessary or appropriate’ means of aiding” a court’s review. *Id.* at 2045 (emphasis added)).

THE STATE OF TEXAS
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office this

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Elizabeth Jasso
Deputy

S.W.3d at 595. The CCA determined that the “trial court was therefore clearly and indisputably without jurisdiction to issue the order in question.” *Id.* Same here. Murphy points to no authority under which this Court may order funding or order transport of Murphy. That’s because there is none, and his motion should accordingly be denied.

CONCLUSION

The State respectfully requests that the Court deny Murphy’s Motion for MRI and Associated Orders.

Respectfully submitted,

/s/ Ali M. Nasser
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THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitre, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my official hand and seal of
office, this 15 day of SEP, 2023.

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Elizabeth Jasso

Deputy

CERTIFICATE OF SERVICE

I certify that on September 5, 2023, a true and correct copy of the foregoing document was served through the State's electronic service provider and the Court's electronic filing manager to Murphy's counsel of record:

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THE STATE OF TEXAS
COUNTY OF DALLAS

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Dallas County, Texas, do hereby certify
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By: Lizabeth Ja
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MRI AND ASSOCIATED ORDERS

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Associated Case Party: JEDIDIAHISAACMURPHY

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Associated Case Party: STATE OF TEXAS

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COUNTY OF DALLAS

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Witness my official hand and seal
in my office, this _____ day of _____, 2023.

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: Lizabeth Jasso

APPENDIX F

STATE OF TEXAS	§	
	§	IN THE 194TH JUDICIAL DISTRICT
	§	COURT
V.	§	
	§	OF
JEDIDIAH MURPHY	§	
	§	DALLAS COUNTY, TEXAS

**NON-PARTY UTMB’S OPPOSITION TO MURPHY’S MOTION REQUESTING MRI
AND ASSOCIATED ORDERS**

Non-party University of Texas Medical Branch at Galveston (“UTMB”), through the Office of the Attorney General of Texas, files this response to Jedidiah Murphy’s Motion Requesting MRI and Associated Orders. Mr. Murphy moves this Court to order UTMB to perform a brain scan or MRI on Murphy prior to September 19, 2023.¹

I. Statement of the Case

On or about October 4, 2000, Murphy robbed an elderly woman at gunpoint, shooting her while placing her in her own trunk. Murphy then drove the woman’s vehicle across county lines and drowned the women in a creek. In June 2001, Murphy was convicted of the offense of capital murder. The jury answered the special issues submitted pursuant to Article 37.071, and the trial court, accordingly, set punishment at death. *See* TEX. CODE CRIM. PROC. art. 37.01.

Murphy has previously filed multiple writ applications and in 2010, the Court of Criminal Appeals dismissed allegations raised by Murphy as abuses of the writ under Texas Code of

¹ This exact issue is currently pending before the Court of Criminal Appeals. *In re University of Texas Medical Branch-Galveston*, WR-91,715-01. There, counsel sought and obtained an *ex parte* discovery order directing UTMB to perform an MRI on Mr. Compton’s brain. After the discovery order was granted, the Court of Criminal Appeals granted UTMB’s motion to stay the enforcement of the discovery order pending the resolution of their petition for writ of mandamus. To date, there has been no ruling on the merits of the issue.

Criminal Procedure Article 11.071 § 5. *See Ex parte Murphy*, No. WR-70,832-02, 2010 WL 3905152, at *1 (Tex. Crim. App. Oct. 6, 2010) (per curiam) (not designated for publication). It appears that counsel for Murphy was then appointed “to represent Murphy in post-conviction matters.” *Murphy’s Motion Requesting MRI and Associated Orders*. This Court lacks authority under Article 11.071 to grant the relief Murphy seeks.

II. Argument and Authority

a. This Court lacks authority to grant relief under Article 11.071 of the Texas Code of Criminal Procedure.

A criminal defendant has no general right of discovery apart from “exculpatory or mitigating evidence in the State’s possession, custody, or control.” *Washington v. State*, 856 S.W.2d 184, 187 (Tex. Crim. App. 1993); *In re State*, 116 S.W.3d 376, 381 (Tex. Ct. App.—El Paso 2003). While Article 39.14 vests a trial court with the authority to order the State to produce certain evidence material “to any matter involved in the action” that is in the possession, custody, or control of the State, Article 39.14 “applies exclusively to pretrial and trial discovery.” TEX. CODE CRIM. P. art. 39.14(a). With Murphy having been convicted and sentenced to death, his attempt to obtain post-conviction discovery is limited by Article 11.071, which requires the filing of an application for a writ of habeas corpus.

This Court lacks jurisdiction to grant Murphy’s motion. “When a conviction has been affirmed on appeal and the mandate has issued, general jurisdiction is not restored in the trial court.” *State v. Patrick*, 86 S.W.3d 592, 595 (Tex. Crim. App. 2002). “The trial court has special or limited jurisdiction to ensure that a higher court’s mandate is carried out and to perform other

functions specified by statute, such as finding facts in a habeas corpus setting or . . . determining entitlement to DNA testing.” *Id.*

a. Convicting Court’s authority

At the pre-filing stage of a death penalty writ proceeding, a convicting court’s authority is strictly limited to granting requests for expenses and ordering reimbursement for expenses. *See* TEX. CODE CRIM. PROC. art. 11.071 § 3(c), (d). A bedrock principle of statutory interpretation is that statutes should be construed “according to its plain language, unless the language is ambiguous or the interpretation would lead to absurd results that the legislature could not have intended.” *Tapps v. State*, 294 S.W.3d 175, 177 (Tex. Crim. App. 2009) (citing *Thompson v. State*, 236 S.W.3d 787, 792 (Tex. Crim. App. 2007)). In discerning the collective legislative intent or purpose, the Court focuses on “the literal text of the statute in question[,]” because the Legislature is “constitutionally entitled to expect that the Judiciary will faithfully follow the specific text that was adopted.” *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991). Section 1 of Article 11.071 states: “[n]otwithstanding any other provision of this chapter, this article establishes the procedures for an application for a writ of habeas corpus in which the applicant seeks relief from a judgment imposing a penalty of death.” TEX. CODE CRIM. P. art. 11.071, § 1. Article 11.071 details the “other functions” a convicting court has the authority to perform when a person seeks to challenge his death sentence by way of a post-conviction application for writ of habeas corpus. *Patrick*, 86 S.W.3d at 594. In other words, the authority a convicting court has in a writ of habeas corpus proceeding in which the applicant seeks relief from a sentence imposing death is limited to the mandates of Article 11.071 of the Texas Code of Criminal Procedure.

The plain language of Article 11.071, Section 3 is clear and unambiguous. The Texas Legislature expressly grants a convicting court authority in two scenarios under Section 3. First, a convicting court shall:

grant a request for expenses in whole or in part if the request for expenses is timely and reasonable. If the court denies in whole or in part the request for expenses, the court shall briefly state the reasons for the denial in a written order provided to the applicant.

TEX. CODE CRIM. P. art. 11.071, § 3(c). Second, a convicting court shall:

order reimbursement of counsel for expenses, if the expenses are reasonably necessary and reasonably incurred. If the convicting court denies in whole or in part the request for expenses, the court shall briefly state the reasons for the denial in a written order provided to the applicant. The applicant may request reconsideration of the denial for reimbursement by the convicting court.

TEX. CODE CRIM. P. art. 11.071, § 3(d). Simply put, the Texas Legislature did not grant convicting courts an expansive authority at the Section 3 stage.

Non-party does not take a position on Murphy’s motion for “funds to be used to obtain an MRI for TDCJ inmate Jedidiah Murphy....” However, Murphy’s motion to direct non-party UTMB to perform a brain scan or MRI has no basis under Article 11.071. Before a habeas petition is submitted, Article 11.071 does not authorize this Court to order a third party to act.²

Article 11.071 lays out, in lengthy detail, the entire process of filing a writ of habeas corpus in a death penalty case. *See* TEX. CODE CRIM. PROC. art. 11.071. The statute begins with outlining the procedures for appointing counsel followed by reimbursement and investigation of grounds for the application, and eventually to the submission of the application with this Court. *Id.* As an

² While it is true that Murphy has previously filed habeas petitions and been denied relief pursuant to the subsequent-writ bar, for purposes of Murphy’s representation in this matter, counsel was appointed to prepare a writ application and has not yet submitted a writ application under Article 11.071. *See Ex parte Murphy*, No. WR-70,832-02, 2010 WL 3905152, at *1 (Tex. Crim. App. Oct. 6, 2010) (per curiam) (not designated for publication). Accordingly, this Court’s current authority falls under Article 11.071 § 3 and is constrained to orders related to funding and reimbursement.

applicant advances through the stages of a post-conviction application for writ of habeas corpus, Article 11.071 seemingly grants a wider range of authority to the convicting court. For example, at the earliest stage, the convicting court is limited to appointing either independent counsel or the Office of Capital and Forensic Writs to represent a defendant that is sentenced to death. *Id.* at § 1. The convicting court is granted additional authority once counsel is appointed to represent a defendant sentenced to death in Section 3 of the Article 11.071. Specifically, upon writ counsel's request for the prepayment of expenses related to its investigation, a convicting court shall "grant a request for expenses in whole or in part if the request for expenses [from writ counsel] is timely and reasonable." *Id.* at § 3(c). Additionally, if the convicting court denies writ counsel's request for the reimbursement of expenses under subsection (d), the convicting court "shall briefly state the reasons for the denial in a written order provided to the applicant." *Id.* Apart from these two actions, a convicting court does not have the statutory authority to act, interfere in, or enter an order for writ counsel's investigation of the factual and legal grounds for the filing of an initial writ application under Section 3. Furthermore, there is no authority for a court enter an *ex parte* order, like the one sought in this matter.

Further evincing of the Legislature's intent can be found in the expansion of authority the convicting court receives through subsequent sections of 11.071. Namely, the convicting court has authority to hold a show cause hearing to determine whether the applicant can establish good cause that would justify an extension of time to file his application for writ of habeas corpus. *See id.* at § 4. In addition, the convicting court may hold a hearing to determine if "unresolved factual issues material to the legality of the applicant's confinement exist[.]" *See id.* at § 9(a). In the hearing, the convicting court becomes a fact finder and may request "affidavits, depositions, interrogatories,

and evidentiary hearings and may use personal recollection.” *Id.* The Legislature clearly intended for a convicting court’s authority to be limited until a writ application is submitted.

Expounding upon that intent is the fact that the Legislature made it clear in Sections 4 and 9 that it was able and willing to expand the convicting court’s jurisdiction when such an expansion was necessitated. But, at the Section 3, pre-writ filing stage, the Legislature only authorized a convicting court to grant requests for expenses and order reimbursement for expenses. *Id.* at § 3(c), (d).

Also of importance is the Legislature’s references to Section 3 found in other parts of Article 11.071. In Section 4, the Legislature specifically referenced Sections 2A and 3 and noted that it applies “to compensation and reimbursement of counsel appointed under Subsection(b)(3)...” *See id.* at § 4(e). In Section 6 of Article 11.071, the Legislature again referenced Section 3, stating:

Regardless of whether the subsequent application is ultimately dismissed, compensation and reimbursement of expenses for counsel appointed under Subsection (b-1) shall be provided as described by Section 2, 2A, or 3, including compensation for time previously spent and reimbursement of expenses previously incurred with respect to the subsequent application.

id. at § 6(b-2). It is clear, when viewing Article 11.071 in its entirety, that the Legislature intended for the convicting court’s authority under Article 11.071, Section 3 to be limited to solely reimbursement and compensation.

Thus, reading Article 11.071 in its entirety, the plain language of Section 3 is clear that a convicting court’s authority is strictly limited to granting requests for expenses and ordering reimbursement for expenses.

Put simply, under Article 11.071, a convicting court does not have authority, before a writ application is filed, to order a non-party to conduct brain imaging and blood tests or act *ex parte* to effectuate that order. As detailed above, a convicting court's authority is limited solely to the mandates under Article 11.071, and at the Section 3 pre-filing stage, a convicting court's authority is limited solely to granting requests for expenses and ordering reimbursement for expenses. Accordingly, because Article 11.071, Section 3, limits a convicting court's authority to granting of requests and ordering of reimbursement for expenses, it follows that Section 3 does not authorize a convicting court to order UTMB to conduct brain imaging on Mr. Murphy.

Moreover, no statutory authority has been invoked here. Murphy, for purposes of this motion, has not filed an application for habeas corpus relief under article 11.071 of the Texas Court of Criminal Procedure.³ Because Murphy cannot point to authority for this Court to order a non-party to generate evidence, his motion requesting this Court to order UTMB to conduct brain scanning should be denied.

b. This Court cannot order a non-party to create evidence

Even if Article 11.071 did not apply, this Court could still not order UTMB to create evidence that does not exist at the time the request is made. *See In re State ex rel. Best*, 616 S.W.3d 594 (Tex. Crim. App. 2021); *see also In re Harris*, 491 S.W.3d 332 (Tex. Crim. App. 2016).

In *Best*, the trial court ordered the State to generate a digital audiovisual recording of Texas Department of Public Safety's DNA testing. *Best*, 616 S.W.3d at 600. The State filed an application for a writ of mandamus, arguing that the trial court lacked "judicial authority to enter his orders, which contravene Article 38.43 and the Separation of Powers Doctrine." *Id.* at 599. The Court of

³ Importantly, this Court still lacks jurisdiction for the relief sought because Murphy has not met the requirements of the subsequent-writ bar. See TEX. CODE CRIM. PROC. art. 11.071 § 5.

Criminal Appeals granted relief and held that “such an order plainly exceeds the permissible scope of a trial court’s discovery discretion[,]” because the trial court “essentially ordered the State to generate documentary evidence... that would not exist but for the order itself.” *Id.* at 600.

The *Best* Court made clear that a trial court cannot order a party, at the pre-trial discovery phase of a criminal case, to create evidence that does not currently exist. And even when the trial court’s authority was at its height, the *Best* Court held that the trial court did not have the authority to order the State to generate evidence. *Id.* It stands to reason that a convicting court in a post-conviction 11.071 capacity has less authority than a trial court before conviction. *Yarbrough v. State*, 703 S.W.2d 645, 649 (Tex. Crim. App. 1985) (holding that after conviction “general jurisdiction is not restored in the trial court, the trial court is nevertheless vested with special or limited jurisdiction to see that this Court’s judgment was executed, and its mandate carried out.”). Accordingly, if a trial court—under the expansive authority it has during the pre-trial stage—cannot issue an order directing a non-party to create evidence then it must be true that a post-conviction convicting court—operating under the limits of Article 11.071—cannot order a non-party to create evidence.

What Murphy requests this Court is exactly the nature of discovery that the *Best* Court determined a trial court did not have authority to order. Murphy requests that this Court order UTMB to create evidence by way of brain scanning—which is evidence that does not exist but for an order itself. *See Best*, 616 S.W.3d at 600. Accordingly, because this Court does not have authority to order non-party UTMB to create evidence, Murphy’s motion should be denied.

Thus, according to the principles set out in *Best*, this Court does not have actual or implied authority under 11.071 to order UTMB to generate evidence that does not exist.

III. CONCLUSION

Non-party UTMB respectfully requests that the Court deny Murphy's Motion Requesting MRI and Associated Orders.

Respectfully submitted,

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BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

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ATTORNEYS FOR NON-PARTY UTMB

CERTIFICATE OF SERVICE

I certify that on September 14, 2023, a true and correct copy of the foregoing document was served through the State's electronic service provider and the Court's electronic filing manager to Murphy's counsel of record and counsel of record for the State of Texas at ali.nasser@oag.texas.gov:

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/s/ Luis A. Suarez
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Assistant Attorney General

APPENDIX G

NO. F00-02424-M

STATE OF TEXAS

* IN THE 194th JUDICIAL

VS.

* DISTRICT COURT

JEDIDIAH MURPHY

* DALLAS COUNTY, TEXAS

ORDER ON MURPHY'S MOTION REQUESTING MRI AND ASSOCIATED
ORDERS


Having considered Defendant Jedidiah Murphy's Motion Requesting MRI
and Associated Orders, the Court finds the following:

_____ The Court finds that Murphy has established sufficient
need for the brain scan and the motion is hereby GRANTED on the merits.

_____ The Court finds that Murphy has NOT established
sufficient need for the brain scan and the motion is hereby DENIED on the
merits.

 ✓ The Court finds that jurisdiction is lacking to consider
the merits of Defendant's motion, and the motion is therefore DENIED for
lack of jurisdiction.

Signed and entered this September 15, 2023.



Judge presiding

THE STATE OF TEXAS
COUNTY OF DALLAS

I, Felicia Pitre, District Clerk of
Dallas County, Texas, do hereby certify
that the foregoing is a true and correct
copy as the same appears on record now
on file in my office.

Witness my hand and seal of office, this _____ day of _____, 2023.

FELICIA PITRE, DISTRICT CLERK
Dallas County, Texas

By: _____
Deputy

FAISAL KHAN.

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Associated Case Party: UTMB

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